



Insurance Department

State of Utah

GARY R. HERBERT

Governor

GREG BELL

Lieutenant Governor

TODD E. KISER

Acting Commissioner

State of Utah Title and Escrow Commission Meeting Meeting Information

Date: May 13, 2013

Time: 9:00 AM

Place: East Bldg, Spruce Room

MEMBERS

(Attendees=x)

COMMISSION MEMBERS

xChair, Larry Turner Blake, *Washington Cnty*

Jerry M. Houghton, *Tooele Cnty*

xCo-Chair, Kirk Donald Smith, *Weber Cnty*

xDirk Keyes, *Public Member*

xCortlund G. Ashton, *Salt Lake Cnty*

DEPARTMENT STAFF

xPerri Babalis, *AG Counsel*

xBrett Barratt, *Deputy Comm.*

xMark Kleinfeld, *ALJ*

xSuzette xGreen-Wright, *MC Dir.*

xTammy Greening, *Examiner*

xJilene Whitby, *PIO Recorder*

xTracy Klausmeier, *P&C Director*

Public

Roy Poll

Carol Yamamoto

Tige Garner

Pete Stevens

Earnest Rowley

Blake Heiner

Russ Nance

Mike Smith

James Seaman

Sue Cragun

Matt Saeger

Jeff Wiener

Lincoln

Scofield

MINUTES

General Session: (Open to the Public)

- **Welcome** / Larry Blake, Chair
Larry began the meeting at 9:03am.
- **Adopt Minutes of Previous Meeting**

Cort proposed three changes:

1. Under Old Business, the discussion Re: Rule R592-17, second bullet and third sentence, after "done" add, "in recent legislative session."
2. Under section discussing "Streamlined or Centralized Rates," fourth sentence, after "Utah has," add, "similar rate filings."
3. In next sentence, after, "structures and see" it should read, "if we have same issue as Colorado."

Cort **moved** to approve the minutes with these changes, Kirk seconded it and the vote was unanimous.

- **Reports**
 - **Concur with Licensee Report / Tammy**
Cort made a **motion** to concur, Dirk seconded it and the vote was unanimous.
 - **Concur with Complaint & Enforcement Reports / Tammy**
Suzette noted that the Closed Investigations portion was incomplete. Cort made a **motion** to table the report until next month.
 - **Request for Dual Licensee Expedited Request:** None
 - **Request for Attorney Exemption:** None
- **Administrative Proceedings Action / ALJ**
 - **Stipulation & Order:** None
 - **Request for a Hearing:** None

- **Order to Show Cause:** Eastwood Title Ins. Agency, Inc.
Mark provided background on the Order and asked if the Commission wanted to hear the case or have him do it. Cort made the **motion** to have Mark hear the case, Dirk seconded it and the vote was unanimous.
- **Informal Adjudicative Proceeding & Order:** None
- **Formal Adjudicative Proceeding:** None
- **Old Business**
 - **Discuss Rule [R592-17](#), “Minimum Mandatory Search...” and the Licensing of Employees doing Searches** / Tammy & Perri.
Perri and Brett reported that in the opinion of the director of Producer Licensing, Randy Overstreet, title searchers were required to have a license as per 31A-23a-103(1)(a), 31A-23a-106(2)(a) and 31A-23a-302.
 - Both Perri and Brett wanted to research the law more before giving a definitive answer. They will report back next month.
 - Suzette could only think of one time the department had fined someone for not having a search license. When a license lapses the department sends the licensee a letter asking how many closings and searches they did while their license was lapsed.
 - **Discussion of Effect of [H.B. 256](#)’s Non-Reauthorization of [R592-2-7\(2\)](#):**
 - a) how to address short term effects of bill that takes effect 5-1-2013; and**
 - b) how to address long-term – New Rule?**

Perri said that as a result of the elimination of Subsection R592-2-7(2) the Commission cannot impose a penalty, or in other words, Stipulations and Orders. Perri had started writing a new rule. Larry suggested just rewriting Subsection (2). Perri reported that Representative Webb said (2) was deleted because an individual told him that the rule needed to be clarified in regards to the “concurrence of the commission.”

 - Perri reviewed procedures for a Stipulation and Order. Once investigation is done by department, it is sent to Gale Lemmon of the AG’s office to investigate and negotiate with the respondent. If agreement to the facts and penalty then it is brought to the Commission for recommendation, then the commissioner to agree or not. The intent was not to discontinue doing Stip and Orders. Until (2) is replaced the Commission will continue to review Stip and Orders. However, if the Commission disagrees with the penalty the process for that case will have to go back to the beginning.
 - Cort made a motion to add this to the agenda, Kirk seconded it and the vote was unanimous.
 - Brett and Perri will work on the rule revision together. Larry asked that they send their product to the Commission as soon as it is ready.
 - **What is Department’s position on Streamlined or Centralized Rates** / Cort
Cort provided copies to attendees of Colorado’s bulletin regarding centralized rates. Jeff reported that as a result of the bulletin there were no more centralized rates in Colorado. The question is if Utah is similar to Colorado. Tracy reported that all insurers have to justify their rates. Several insurers use centralized rates. Utah code currently allows centralized rates. Cort said Colorado did not have statute against them either. The department will investigate a company’s rates once the department receives a complaint.
 - **Reminder of Openings on the Commission**
The department has received 11 applications for the three openings on the Commission. People have until end of day tomorrow to apply. The Governor’s office has given the Commissioner until May 20th to provide his recommendations.
 - **Discuss Issue of Providing Lenders with Disbursement Schedules and Canceled Checks** / Larry
The issue is that money is not going where the escrow instruction say it should go on split closings.

- An attendee said lenders were not following disbursement instructions.
- Cort said it would probably take underwriters providing guidelines that agents would follow on order to solve the problem.
- Jeff said ULTA's underwriting section would be discussing this topic in general at an upcoming conference call. James will also talk with ULTA about it.
- An attendee said that as long as there are split closings, how disbursements are made will be a problem, plus realtors want them so they will be nearly impossible to eliminate.
- It was agreed that most everyone was violating escrow instructions.
- This topic is to remain on the agenda. Larry asked James to check with ULTA for their opinion on the issue.
- **Discuss Issue of Lenders asking for Access to all Records, Post Closing** / Larry
This issue should be combined with the Disbursement bullet above.
- **New Business**
 - **Alternative Survey Products** / Ernest Rowland, President of Utah Council of Land Surveyors
Some members of Utah Council of Land Surveyors expressed concern with First American's express map product. He wondered if the Commission had investigative authority regarding First America's use of the map product. First American plots deeds on top of an aerial photograph in a way that removes that survey exclusion from their policies. The map is not being provided to the client. It was determined that since this was not an insurance product the Title Commission had no authority to investigate.
 - **Discussion Re: [31A-19a-209\(3\)](#) and [R592-15-7](#): Requirement that Rates & Charges Cannot be Less than the Cost of Doing Insurance or Escrow Business** / Brett
Brett said members of the industry had come to him with concerns that title agencies were in violation of this requirement.
 - Tracy reported that title agencies file their title rates with the department. The only requirement for escrow rates is that agencies file a statement that they are not operating at less than the cost of doing business.
 - During discussion it was noted that in 2009 a rule was written and passed setting up tiers of minimum escrow rates. That rule was then repealed by the legislature. It was also noted that everyone was charging less for escrow than it cost to do an escrow business, plus the department did not have enough people to regulate this.
 - Cort suggested changing 31A-19a-209(3)(a)(i) to:
 - (a) Operate at less than the cost of doing:
 - (i) the insurance business; ~~[Ø]~~ and
 - (ii) the escrow business;

This would mean that an agency cannot operate at less than the cost of doing a combined insurance and escrow business. Larry said this would cause escrow rates to plummet. Brett did not think the legislature would pass a bill setting a minimum limit at a time when the focus was on making the business climate more competitive.
 - Brett will try to get stronger direction from those who approached him about this concern then bring it to next month's Commission meeting.
 - An attendee suggested looking at capital requirement to protect consumers. Another person said a minimum rate could put Utah agencies at a disadvantage against national underwriters.
- **Other Business**
 - **Legislation** / Brett
The department is putting together their 2014 legislative bill. He encouraged input as soon as possible.

Executive Session: Not necessary.

- **Adjourn:** Kirk made the **motion** to adjourn, Dirk seconded it.
- **Next Meeting:** June 10, Spruce Room

2013 Meeting Schedule in Spruce Room
(2nd Monday except holidays, then 3rd Monday)

Jan 14	Feb 11	Mar 11	Apr 8	May 13	June 10
July 8	Aug 12	Sep 9	Oct 21	Nov 18	Dec 9